Board of Pilot Commissioners for the Bays of San Francisco, San Pablo, and Suisun (BOPC)

Minutes **Open Session**	**Monthly Board Meeting**	**Date:** April 24, 2014
Location: Board Offices at 660 Davis Street, San Francisco, CA 94111	**Page** 1 **of** 12	

BOPC Board members present

RADM Frank Johnston, President, Public Member
Dave Connolly, Vice President, Public Member
RADM John Brooks, Public member
Capt. Joe Long, Pilot Member
Capt. Steve Roberts, Pilot Member
Ben DeAlba, Ex Officio Member, designee of the Secretary of the California State Transportation Agency

BOPC Staff present

Allen Garfinkle, Executive Director
Roma Cristia-Plant, Assistant Director
Dennis Eagan, Board Counsel
Kelly Dolcini, Staff Services Analyst
Sigrid Hjelle, Office Technician

Others present

Capt. Pete McIsaac, Port Agent

Public present

Pacific Merchant Shipping Association Vice President Michael Jacob, San Francisco Bar Pilot (SFBP) Capt. Mike Sweeney, Mr. Zachary Reynolds, Mr. David Singlestad, SFBP Business Director John Cinderey, and SFBP General Counsel Ray Paetzold were among the public present.

1. **Call to order and roll call**

The meeting was chaired by President Johnston, who called the Board to order at 9:30 a.m. Staff Services Analyst Kelly Dolcini called roll and found that a quorum had been established.

2. <u>Approval of minutes of the March 27, 2014 Board meetings</u>

Board members were presented with the minutes of the March 27, 2014 meeting for approval.

> **MOTION:** Commissioner Long moved to approve the minutes from the March 27, 2014, Board meeting with leave for staff to make non-substantive clerical changes. President Connolly seconded the motion.
>
> **ACTION:** The motion passed unanimously on a voice vote.

3. <u>Announcements</u>

President Johnston announced that on April 9, 2014, he attended the United States Coast Guard Area Maritime Security Council (AMSC) meeting.

On April 12, 2014, he attended the U.S. Naval War College-Newport Seminar on maritime relations between U.S. and China, Japan and North/South Korea.

On April 22, 2014, he attended a change of command of U.S. Coast Guard Pacific Area (PACAREA) Commander.

4. <u>Board Member Activities</u>

President Johnston announced that the Washington State Board of Pilotage Commissioners was unable to host the West Coast Pilotage conference as planned, and that he had offered the possibility that the BOPC could host, pending Board approval.

After discussion, it was decided that the demands placed on Board Staff by the upcoming exam would make it impossible to host the event. President Johnston will communicate with the Washington State Board of Pilotage Commissioners that the BOPC would be unable to host the event this year, but will consider hosting in the future.

5. <u>Executive Director's Report</u>

Correspondence and activities since the last meeting:

Executive Director Garfinkle gave a report of the correspondence received by the Board since the March meeting:

On March 27, 2014, the firm of Michael R. Blanks, CPA provided a final draft of an independent auditor's report of the statutory surcharges collected and disbursed by the San Francisco Bar Pilots on behalf of the Board. A copy of the report was provided to the Commissioners and made available to the public.

On April 14, 2014, Board staff submitted the Annual Legislative Report to the Legislature, which included a summary of major Board activities, vessel movements, status of licensees and trainees, and a summary of incidents that occurred in the 2013. He thanked staff for their contributions to the detailed report.

April 15, 2014, was the final day for applications to be post-marked for the Pilot Trainee Exam, and that as of the day of the Board meeting, staff had received 52 applications, which Mr. Garfinkle reported was on par with the 2010 exam.

On April 18, 2014, Board staff received a Marine Safety Information Bulletin 01-14 from the United States Coast Guard (USCG) Sector New York. It concerned vessel air drafts and allisions with the Bayonne Bridge. They noted that the bridge has been struck twice in the past four months and reminded vessel owners, masters, and persons in charge to review and update the ship's particulars as necessary. The bulletin indicated that cooperation and communication with pilots is essential to safety on the water and the USCG will likely pursue civil penalties against any vessel owner, master, or person in charge who provides inaccurate information that contributes to a bridge allision within the New York-New Jersey Captain of the Port zone. The bulletin also stated the maximum penalty is $40,000 per incident.

Pilot licensing:

Between the February and March meetings, staff renewed licenses for Captains Pate, Bridgman, Aune, Lemke, and Martin.

Since the March meeting, staff renewed licenses for Capts. Gabe, Fuller, Tylawsky and Horton.

Board surcharges:

The Board received a check for $115,298.01 for surcharges collected by the SFBP, which included the following:

Board Operations Surcharge: $28,298.01

Continuing Education Surcharge: $45,000.00

Trainee Training Surcharge: $40,000.00

Legislative matters:

Mr. Garfinkle indicated there had been no legislation affecting the Board since last meeting.

Contractual matters:

Assistant Director Cristia-Plant gave a report on Board contracting activity. She reported that the interagency agreement between UCSF and the Board is nearly final. The California Highway Patrol (CHP) is in the process of obtaining a legal review, and Dr. Kosnik is finalizing the hourly cost of the Medical Review Officer and confirming the last of the subcontracting issues. The annual contract will be approximately $132,000.

Investigator contracts expire June 30, 2014, and staff has initiated an invitation for bid process with the intent to enter into a maximum of six contracts in the $3,000 -$5,000 range.

On April 8, 2014, Board staff sent a statement of work to CHP to begin the procurement process for a new surcharge auditor under an invitation to bid procurement process, which will likely begin in the fall.

Ms. Cristia-Plant announced that the transition from Ghirardo CPA to Mah & Associaates for the pension calculations went off without a hitch. Mah & Associates issued the calculations accurately and on time earlier this month.

She also announced that she and Ms. Dolcini had gone to Sacramento to meet with CHP contracting staff regarding the manned model training contract, and the process for obtaining a budgetary estimate for the upcoming pilot fatigue study.

She reported the manned model contract will be let under a request for proposal (RFP) process with an additional pre-RFP requirement to include a survey of training providers under a "request for interest", which will add approximately one month to the seven-month projected procurement process. CHP indicated that, barring unforeseen circumstances, the contract should be in place by the end of the year, or early next year.

CHP also indicated that Board staff could request budgetary estimates from the three government entities that have been identified as potential fatigue study consultants. Staff hopes to obtain high side budgetary estimates from the consultants in the next few weeks.

Commissioner Connolly thanked Mr. Garfinkle and Ms. Cristia-Plant for their presentations and had expressed his concern about the bridge strikes in light of a recent local whip antenna strike. He wondered what could be done to prevent future incidents, but, after a short discussion among Board members, no meaningful conclusions could be drawn.

6. <u>Port Agent's Report</u>

Capt. McIsaac reported that there were three (3) pilots absent for medical reasons (AFMR) during the month of April.

He also reported that there was one (1) minimum rest period (MRP) exception of 9 hours on March 20, 2014.

Capt. McIsaac reported that the P/V GOLDEN GATE was taken out of service April 14-18, for planned maintenance. The P/V SAN FRANCISCO was taken out of service on April 17 due to a failure of the internal drive coupling. It is unclear when the repairs will be completed.

He next presented a report on billed vessel moves during the month of February. Compared to a year-to-date three-year average: bar crossings were up 1.1% at 523; bay moves were up 11.4% at 113; river moves were up 7.9% at 29; total moves were up 3.1% at 665; and, gross registered tonnage was up 7.8% at 27,810,086 tons.

President Johnston requested a closed session at the end of the meeting to discuss the contents of the Port Agent's confidential AFMR report.

7. <u>Pilot Evaluation Committee</u>

The Pilot Evaluation Committee (PEC) did not meet in April due to the Pilot Trainee Exam simulator exam development, and the desire to avoid over-scheduling PEC members and cause potential pilot minimum rest period exceptions. Mr. Garfinkle gave a PEC report prepared by Capt. Nyborg and reported that both trainees are meeting or exceeding their benchmark requirements; Capt. Sam D'Aloisio has been promoted to the evaluation stage and is carrying and using a navigation laptop or "personal piloting unit" in his daily training. He is also scheduled to attend manned model training this summer.

Mr. Garfinkle also reported that the 2014 Pilot Trainee Exam is currently being developed, and is on track for completion in mid-June, and that a series of pilots will test the simulator portion of the exam prior to the exam.

Lastly, he stated the PEC is in the process of developing guidelines for trainees who are witness to, or involved in a reported piloting incident. Upon completion of development, the guidelines will be presented for Board approval.

8. <u>Reported Safety Standard Violations</u>

Mr. Garfinkle reported that there have been no safety standard violations since the last meeting.

9. <u>Reportable Piloting Events</u>

On October 15, 2013, the ITB MOKU PAHU allided with the New York Slough Channel Marker #7. Mr. Garfinkle reported on this incident under agenda item 19.

On November 29, 2013, there was an interaction between the M/V ESSEX STRAIT and the M/T CHAMPION EXPRESS in the Port of Stockton. The M/T CHAMPION EXPRESS alleged gangway damage as a result of the interaction. The 90-day deadline for reporting on the incident occurred on February 27, 2014, but due to the demands placed on Board staff by the

Legislative report and exam applicant evaluations, Mr. Garfinkle requested an extension until the May 22, 2014 Board meeting.

MOTION: Commissioner Long moved to grant an extension to the May 22, 2014, meeting. Vice President Connolly seconded the motion.

ACTION: The motion passed unanimously on a voice vote.

10. <u>Low-Sulfur Fuel Report</u>

Mr. Garfinkle reported on loss of propulsion incidents due to fuel switching.

Vice President Connolly questioned where the events were taking place, whether at sea or within the Bay, remarking that it would be helpful to know that information. The Port Agent reported that he gets reports of loss of propulsion incidents in pilotage grounds and can report on them at monthly meetings.

11. <u>Surcharge Audit</u>

Mr. Garfinkle reported on the 2013 surcharge audit completed by Michael R. Blanks, CPA and described it as a "clean audit." Copies of the report were provided to Board members and made available to the audience. Mr. Garfinkle requested that the Board accept the surcharge audit report.

MOTION: Commissioner Roberts moved to accept the surcharge audit report. Commissioner Long seconded the motion.

ACTION: The motion passed unanimously on a voice vote.

12. <u>Implementation of Pilot Fitness Regulations</u>

Ms. Cristia-Plant reported on the status of the pilot fitness regulations during her report. The Board and UCSF Medical Center are still hashing out details; however, a contract is imminent. Commissioner Roberts asked how pilots would be notified of the new medical exam physicians

and procedures, and Mr. Garfinkle assured him that a letter would be sent to the pilots with all pertinent details included.

13. <u>Rescheduling of June Board Meeting</u>

Due to the scheduled date of the June Board meeting conflicting with the Pilot Trainee Exam, the Board meeting will need to be rescheduled. Suggested dates were June 19, 2014 and July 3, 2014.

MOTION: Commissioner Long moved to reschedule the June Board meeting to June 19, 2014. Vice President Connolly seconded the motion.

ACTION: The motion passed unanimously on a voice vote.

14. <u>Report on Public Records Act Litigation</u>

Board Counsel Eagan reported that the Pacific Merchant Shipping Association's (PMSA) motion for attorney's fees has been moved to May 9, 2014 at PMSA's request.

15. <u>Report on Fair Political Practices Commission decision to include Port Agent in Board's Conflict of Interest Code. Possible Board action.</u>

Mr. Eagan reported that he had submitted a brief on appeal on April 22, 2014, to the general counsel of the Fair Political Practices Commission of his determination that the Port Agent should be included in the BOPC's conflict of interest code.

At 10:20 a.m., The Board took a 10-minute recess.

The meeting resumed at 10:30 a.m. President Johnston next directed the Board to items 17 and 18 to be considered out of order for the benefit of the public.

17. <u>Public Comment on Matters Not on the Agenda</u>

The Port Agent reported that he had received news of a Columbia River Bar Pilot shattering her shoulder on duty. He had no further information.

18. <u>Proposals for Next Month's Agenda</u>

President Johnston announced that he would not be able to attend the May 22, 2014, meeting.

16. <u>Incident Review Committee – Incident report on the October 15, 2014 allision involving the ITB MOKU PAHU and New York Slough Channel Marker #7. Possible Board Action on IRC recommendation.</u>

President Johnston recused himself as a voting member of the Board due to his status as chairman of the Incident Review Committee (IRC) and Vice President Connolly assumed the duties of President.

Mr. Garfinkle presented the IRC report. On the afternoon of October 15, 2013, the ITB MOKU PAHU was moving a load of coal from the port of Stockton to San Francisco Pier 80. The pilot, Capt. Michael Sweeney, was proceeding slowly, due to the ship being heavily laden. He was accompanied by trainee Capt. Cevan LeSieur.

At the entrance to New York Slough, while the pilot boat PITTSBURG was maneuvering to come alongside, the ship did not respond well to a left hand turn Capt. Sweeney's was making, forcing him to make an unconventional turn to the north of a buoy.

Capt. Daniel Bridgman and trainee Capt. Sam D'Aloisio boarded the ship and began preparations to relieve the Capt. Sweeney, including a master-pilot exchange regarding the course and the possibility of the trainee taking the conn. As preparations were being made for Capt. Bridgman to take the conn, the ship experienced bank suction on the southern bank, which caused it to sheer toward the north side of the channel. Capt. Sweeney ordered full ahead and hard left rudder, but, in spite of his efforts, the starboard bow and shoulder made contact with the northern bank as well as daymark #7. There was no damage to the vessel and the daymark was repaired by the U.S. Coast Guard with no report of cost.

The IRC concluded that Capt. Sweeney was sufficiently distracted to allow the ship to drift close to the bank to experience suction. Based on his loss of situational awareness and the communication breakdown that occurred in the moments preceding the incident, the IRC recommended that the Board find pilot error in this incident and that Capt. Sweeney be instructed to take an American Pilot Association (APA) approved bridge resource management course.

After the IRC findings had been presented, Capt. Sweeney, and his counsel Mr. Dave Singlestad, were given the opportunity to present arguments on Capt. Sweeney's behalf, stating that the vessel had a history of being difficult to control and that the focus of the investigation should not be on Capt. Sweeney, but on the maneuverability of the ship.

Mr. Singlestad offered the expert witness testimony of naval architect Zachary Reynolds on the vessel design and hydraulic effect. He speculated that the vessel was unstable by design and was unable to maneuver at low speeds under heavy load. Commissioner Brooks inquired about Mr. Reynolds' background and sea time and whether he had served in the capacity of an expert witness before. Mr. Reynolds' responded that he had little sea time, but has served as an expert witness on previous occasions.

Capt. Sweeney described the other incidents involving pilots on the ITB MOKU PAHU and their difficulties controlling it. He also stated his dissatisfaction with the manner in which the investigation was conducted, expressing disappointment that the VDR evidence was not captured and presented and asserted that it would have added valuable evidence to the investigation.

Mr. Garfinkle offered a rebuttal, in which he confirmed that the MOKU PAHU is an unusual vessel to handle, but that it was the confusion on the bridge caused the distraction and subsequent incident and that since January 2011 the MOKU PAHU has been moved approximately 72 times with few incidents.

Ex-officio Member De Alba asked if any pilots present would share with him their protocol for relieving each other. Commissioner Long said that when he gets on a ship, he tries to orient himself with the bridge and then verbally confirms when he takes the con so that the bridge team can hear him clearly.

Following the public discussion, the Board chose to enter a closed session to determine whether it would accept the IRC recommendation.

The Board then went into closed session to discuss agenda item #16.

BEGIN CLOSED SESSION: 11:40 a.m.

END CLOSED SESSION: 12:08 p.m.

Vice President Connolly re-convened in open session and announced that the Board had discussed the IRC recommendation in closed session and taken a vote on the matter. The Board voted unanimously to accept the IRC recommendation for pilot error, but with one change: that the APA approved Bridge Resource Management course be at Capt. Sweeney's expense.

The Board then went into closed session to discuss agenda item #6.

BEGIN CLOSED SESSION: 12:10 p.m.

END CLOSED SESSION: 12:30 p.m.

RESUME OPEN MEETING: 12:30 p.m.

It was noted that a quorum was present.

24. <u>Adjournment</u>

There being no further business before the Board, the meeting was adjourned at 12:30 p.m.

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Allen Garfinkle, Executive Director

Prepared by: Kelly Dolcini